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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN JOSE DIVISION**  
10

11 JOHN MARTINO, an individual, for himself  
12 and those similarly situated; ADONIS  
13 AMOROSO, an individual, for himself and  
those similarly situated; and ROES 1 through  
30,000 and the proposed Class,

14 Plaintiffs,

15 vs.

16 ECOLAB INC., a Delaware Corporation; and  
17 DOES 1 through 100, inclusive,

18 Defendants.  
19

CASE NO: 5:14-cv-04358-VC

CLASS ACTION

*Assigned to Judge Vince Chhabria*

CLASS ACTION

**JOINT STIPULATION OF CLASS  
ACTION SETTLEMENT AND RELEASE**

20 Subject to the approval of the Court, this Joint Stipulation of Class Settlement and Release  
21 ("Settlement") is made and entered into by and between Plaintiffs John Martino and Adonis  
22 Amoroso ("Named Plaintiffs"), individually and as class representatives of the Class Members, as  
23 defined below, (collectively, the "Class"), on the one hand, and Defendant Ecolab Inc., including its  
24 officer, directors, shareholders, managing agents, representatives, attorneys, successors, assigns,  
25 predecessors, successors, affiliates, parents, subsidiaries, and related companies (collectively  
26 "Ecolab"), on the other hand. The Class and Ecolab are jointly referred to in this Settlement as the  
27 "Settling Parties."  
28

## DEFINITIONS

In addition to the other terms defined elsewhere in this Settlement, the terms below have the following meanings in this Settlement:

### I. DEFINITIONS

A. “Action” means the civil action entitled *John Martino, et al v. Ecolab Inc.*, Northern District of California Case Number 5:14-cv-04358-PSG, which was commenced on June 4, 2014 in the Superior Court of California, County of Santa Clara, originally Santa Clara County Case No. 114 CV 266125, and later removed to the U.S. District Court for the Northern District of California (hereinafter the “Court”), pursuant to the Class Action Fairness Act of 2005 (28 U.S.C. §§ 1332, 1441, and 1453).

B. “Claims Administration Costs” means all fees and costs owed to the Claims Administrator in connection with administering the class settlement in this Action under the terms of this Settlement.

C. “Claims Administrator” means the third-party administrator appointed by the Court to administer the class action settlement of this Action under the terms of this Settlement. CPT Group shall serve as the Claims Administrator, subject to the Court’s approval.

D. “Class Counsel” means the law firms of Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez and Strauss & Palay, APC.

E. “Class Counsel Fees and Expenses” means the total amount of attorneys’ fees, litigation costs, and expenses awarded to Class Counsel by the Court to compensate them for their representation of the Class in this Action, including their pre-filing investigation, their filing of the Action, all related litigation activities including discovery, the motion for class certification and summary judgment, this Settlement, and all post-Settlement compliance procedures.

F. “Class Members” means all current and former Territory Managers, and/or Hospitality Territory Managers (herein, the “TMs”) employed by Defendant Ecolab Inc. in California at any time from June 4, 2010 to February 16, 2016, unless an individual opted out of the Action. There are a total of 262 Class Members, including the Named Plaintiffs.

1           **G.**       “Class Period” shall mean the period of time from June 4, 2010 through October 15,  
2 2016, or the date the Court grants final approval of the Settlement, whichever occurs first.

3           **H.**       “Class Representative Incentive Award” means the amounts awarded by the Court  
4 to each of the class representatives, plaintiffs John Martino and Adonis Amoroso. Pursuant to the  
5 terms of this Settlement, incentive awards shall be requested in the amounts of up to and not to  
6 exceed: (1) \$15,000 for John Martino; and (2) \$15,000 for Adonis Amoroso.

7           **I.**       “Class Representatives” shall mean the current named plaintiffs, John Martino and  
8 Adonis Amoroso.

9           **J.**       “Compensable Weeks Worked” means for each Class Member the total number of  
10 weeks during the Class Period in which the Class Member performed work for Ecolab in California  
11 as a TM. “Compensable Weeks Worked” shall include all weeks for which Ecolab’s payroll records  
12 reflect that a Class Member received any pay for work performed (*e.g.*, a Class Member who is on  
13 leave for an entire week does not receive “pay for work performed” during that period, regardless of  
14 whether the leave is paid).

15          **K.**       “Court” means the United States District Court, Northern District of California.

16          **L.**       “Ecolab’s Counsel” means Jody A. Landry and John A. Ybarra, of Littler  
17 Mendelson, PC.

18          **M.**       “Effective Date” means the date by which all of the following have occurred:

- 19           1.       The Court has finally approved the Settlement and entered Judgment thereon;
- 20           2.       The Court issues an order dismissing the Action; and
- 21           3.       The Judgment has become Final, as defined herein below.

22          **N.**       “Final” means that the Settlement has been finally approved by the Court without  
23 material modification and either: (i) the applicable date for seeking appellate review of the Court’s  
24 final approval of the Settlement has passed without a timely appeal or request for review having  
25 been made; or (ii) if an appeal, review or writ is sought from the final judgment (including an appeal  
26 by Class Counsel of any fee reduction), the day after the judgment is affirmed or the appeal, review  
27 or writ is dismissed or denied, and the judgment is no longer subject to further judicial review.  
28

1           **O.**       “Final Approval Hearing” means the hearing to be conducted by the Court to  
2 determine whether to finally approve and implement the terms of this Settlement.

3           **P.**       “Gross Maximum Settlement Amount” is the total maximum potential monetary  
4 value of the settlement payable by Ecolab as provided herein, which is Twenty-One Million Dollars  
5 (\$21,000,000.00). The Gross Settlement Amount is inclusive of all payments to Class Members  
6 under the terms of this Settlement, Class Counsel Fees (up to and not to exceed \$6,300,000 or 30%  
7 of the Gross Settlement Amount) and Expenses (not to exceed \$50,000) awarded by the Court, the  
8 Class Representative Incentive Award (in the discrete amounts stated hereinabove in paragraph “H”) approved by the Court, Claims Administration Costs (not to exceed \$15,000), and the LWDA  
9 Payment defined below.  
10

11           **Q.**       “Judgment” means the judgment entered by the Court after it grants final approval  
12 of this Settlement.

13           **R.**       “Net Settlement Amount” means the Gross Maximum Settlement Amount less Class  
14 Counsel Fees (up to and not to exceed 30% of the Gross Settlement Amount) and Expenses (not to  
15 exceed \$50,000) approved by the Court, the Class Representatives’ Incentive Award (up to \$30,000  
16 total for both of the named plaintiffs identified in paragraph “H,” above) approved by the Court, the  
17 LWDA Payment defined below, the Claims Administration Costs (not to exceed \$15,000).

18           **S.**       “Preliminary Approval of the Settlement” means the Court’s preliminary approval of  
19 the Settlement.

20           **T.**       “Settlement Share” means the amount of each Class Member’s share of the Net  
21 Settlement Amount, as determined in accordance with the terms of this Settlement.

22           **U.**       “Weekly Payout Amount” means, and is calculated by, the Net Settlement Amount  
23 divided by the number of work weeks worked by all Class Members during the Class Period.

## 24   **II.   RECITALS**

25           **A.**       On June 4, 2014 John Martino and Adonis Amoroso filed a class action complaint  
26 against Ecolab Inc. in the Superior Court of California, County of Santa Clara. The Complaint  
27 alleged violations of California’s overtime laws, wage statement laws, and unfair business practices  
28 based on a number of alleged violations of the California Labor Code. The action, by way of

1 amendment, subsequently included a claim for penalties under the Private Attorney General Act  
2 (“PAGA”). The action was removed to the United States District Court for the Northern District of  
3 California, San Jose Division, on or about September 26, 2014.

4       **B.**       Class Counsel filed a motion for class certification on July 15, 2015, which was  
5 opposed by Ecolab. The District Court granted the motion for class certification on February 16,  
6 2016. Soon thereafter notice went out to the TMs that met the class definition and they were  
7 provided with the opportunity to opt-out. After that process was completed there were 262 Class  
8 Members.

9       **C.**       On May 9, 2016 the Settling Parties attended mediation with Hunter R. Hughes III, a  
10 nationally distinguished labor and employment mediator. After lengthy negotiations during which  
11 the Class, represented by their counsel, and Ecolab, represented by its counsel, recognized the  
12 burdens and risk of continuing with the litigation, the Parties reached an agreement to settle and  
13 resolve all claims alleged in the operative Complaint or which could have been alleged based on the  
14 allegations in the Complaint. At the mediation, the Settling Parties agreed to certain materials terms  
15 of a settlement agreement, which were set forth in a term sheet and signed by representatives for the  
16 Parties (“Settlement Terms”). This Settlement supersedes the Settlement Terms that the Settling  
17 Parties signed on May 9, 2016. Said document has no further force and effect once this Settlement is  
18 signed.

19       **D.**       This Settlement represents a compromise and settlement of highly disputed claims.  
20 Nothing in the Settlement is intended, or may be construed, as an admission by Ecolab that any of  
21 the claims alleged in the Action have merit, or that Ecolab bears any liability to the Class Members  
22 on those claims, nor as an admission by the Class Members that Ecolab’s defenses in the Action  
23 have merit. Ecolab asserts that Territory Managers and Hospitality Territory Managers should not  
24 be treated as hourly employees, but instead are properly paid on a salary plus commission basis, and  
25 are therefore properly exempt from and not entitled to overtime, and are not owed any overtime  
26 wage or penalties.

27       Based on these Recitals, the Settling Parties hereby agree as follows.  
28

1 **III. SETTLEMENT TERMS AND CONDITIONS**

2 **A. Gross Maximum Settlement Amount.** In order to settle the claims in this Action,  
3 Ecolab agrees to pay a maximum gross sum of Twenty-One Million Dollars (\$21,000,000.00). This  
4 Gross Maximum Settlement Amount is inclusive of: all payments to Class Members under the terms  
5 of this Settlement; PAGA Penalties (\$100,000); Class Counsel Fees (up to and not to exceed  
6 \$6,300,000.00 or 30% of the Gross Settlement Amount) and Expenses (not to exceed \$50,000)  
7 awarded by the Court; the Class Representative Incentive Awards (collectively, up to \$30,000  
8 distributed as set forth in Definitions paragraph "H") approved by the Court; Claims Administration  
9 Costs (not to exceed \$15,000); and all federal, state and local taxes (employee side). In addition to  
10 the Gross Settlement Amount, Ecolab agrees to pay its share of any taxes owed for wages paid to the  
11 Class Members (employer's share of FICA). No other amounts will be paid by Ecolab to the Class  
12 or their counsel.

13 **B. Class Counsel Fees And Expenses.** Ecolab and their counsel will not oppose the  
14 application to the Court by the Class for an award of Class Counsel Fees and Expenses consisting of:  
15 (1) up to 30% (\$6,300,000.00) of the Gross Maximum Settlement Amount for attorneys' fees; and  
16 (2) up to Fifty Thousand Dollars (\$50,000.00) for reimbursement of Class Counsel's costs. Class  
17 Members and Class Counsel shall not seek payment of attorneys' fees or reimbursement of costs or  
18 expenses except as set forth herein. The award of such Class Counsel Fees and Expenses will be  
19 paid from the Gross Maximum Settlement Amount. Ecolab (or the Claims Administrator) will issue  
20 an IRS Form 1099 to Class Counsel with respect to the attorneys' fees and costs awarded to them.  
21 Ecolab agrees not to oppose a motion for attorney's fees or a bill of costs for the aforementioned  
22 amount should not be construed as approval or endorsement by Ecolab of the amount sought.  
23 Whatever attorney's fees and costs the Court approves shall be paid from the Gross Maximum  
24 Settlement Amount. Should the Court approve less than the amount of fees and costs requested by  
25 Class Counsel, and Class Representative chooses not to appeal that decision, the difference shall be  
26 included in the Net Settlement Amount. However, if Class Counsel and/or the Class files a timely  
27 appeal regarding the amount of Class Counsel Fees and Costs approved by the Court, Ecolab shall  
28 not be required to fund any portion of the Gross Maximum Settlement Amount, and the Claims



1 Administrator shall not distribute or pay any monies, until such appeal has been finally resolved or  
2 dismissed with prejudice.

3 **C. LWDA Payment.** Of the Maximum Settlement Amount, \$100,000.00 shall be  
4 deemed payment for the State of California Labor Workforce Development Agency ("LWDA")  
5 share of PAGA Penalties, all of which will be payable out of the Gross Maximum Settlement  
6 Amount. This payment represents the 75% amount allocated to PAGA Penalties that will be paid to  
7 the LWDA. The remaining 25% is included in the Net Settlement Amount.

8 **D. Class Representative Incentive Awards.**

9 1. Class Counsel will request, and Ecolab will not oppose, payment of an incentive  
10 award to each of the two named plaintiffs in the Action, up to and not to exceed Fifteen Thousand  
11 Dollars (\$15,000.00) to each. Pursuant to the terms of this Settlement, incentive awards shall be  
12 requested in the amounts of: (1) \$15,000 for John Martino; and (2) \$15,000 for Adonis Amoroso.  
13 The incentive award to each named plaintiff is intended as reasonable additional compensation for  
14 the time and effort expended by each of them in connection with the initiation and maintenance of  
15 this Action. The Class Representative Incentive Awards will be paid from the Gross Maximum  
16 Settlement Amount, and is in addition to whatever payment the named plaintiffs are otherwise  
17 entitled to as a Class Member. The Class Representative Incentive Awards will be reported to the  
18 taxing authorities by means of an IRS Form 1099. The amount(s) of the Class Representative  
19 Incentive Awards is left to and within the Court's sole discretion. Ecolab agrees not to oppose an  
20 application for the Class Representative Incentive Awards; however, that should not be construed as  
21 approval or endorsement by Ecolab of the amount sought. Whatever Class Representative Incentive  
22 Award(s) the Court orders shall be paid from the Gross Maximum Settlement Amount. Should the  
23 Court approve less than the amount of the Class Representative Incentive Awards requested, or not  
24 at all, the difference shall be included in the Net Settlement Amount. The Parties agree that the  
25 approval, and amount, of any incentive awards in this Action shall be in the Court's sole discretion  
26 and not subject to any appeal by the named plaintiffs who are the intended recipients of any  
27 approved Class Representative Incentive Awards. This Settlement is not contingent on the Named  
28 Plaintiffs' receipt of any incentive award out of the Settlement Amount.

2. The Class Representatives acknowledge and agree that Ecolab and its attorneys have made no representations or warranties regarding the tax consequences of payment of the Incentive Award, and Class Representatives have not relied on any such representations or warranties. Class Representatives further agree to pay and bear sole responsibility for all taxes, liens, levies, encumbrances, interest, and penalties that may be due or payable to any taxing authority as a result of payment of the Incentive Award. Furthermore, Class Representatives agree to defend and indemnify Ecolab in connection with any taxes, fines interest or penalties incurred as a result of any failure by Class Representatives to pay taxes due, if any, on the Incentive Award paid pursuant to this Agreement.

**E. Claims Administration Costs.** The parties agree that CPT Group, Inc. ("CPT") will act as the Claims Administrator in this matter. Class Counsel has or will obtain a "not to exceed" quote from CPT. The "not to exceed" quote will represent the Claims Administrator's agreement that, based on the class size and distributions under the terms of this Settlement, the costs for administration of the terms of this Settlement will not exceed a specified monetary amount. All of the Claims Administration Costs shall be paid from the Gross Settlement Amount upon completion of all duties required to be performed by the Claims Administrator under the terms of this Settlement, or as otherwise required by the Court, subject to the "not to exceed" quote from the agreed upon Claims Administrator.

**F. Settlement Shares.** After deducting the Class Counsel Fees and Expenses, the Class Representative Incentive Awards, the LWDA Payment, and the Claims Administration Expenses, the remainder of the Gross Maximum Settlement Amount (the "Net Settlement Amount") will be divided and distributed to Class as follows:

**1. Payment To Class Members.**

The amount that each Class Member will be eligible to receive under the Settlement will be determined by converting the Net Settlement Amount into a weekly value. The weekly value will be established by dividing the Net Settlement Amount by all full workweeks worked by the 262 members of the Class as a TM. The weeks worked during the class period will be derived from the hire and termination dates and payroll data in Ecolab's records to be supplied to the Administrator.



1 Leave of absence weeks will be excluded.

2 The gross settlement award for each Class Member will be determined by multiplying the  
3 weekly value by the number of weeks they individually worked during the class period.

4 The gross settlement award will be apportioned as follows: 50% as wages and 50% for  
5 interest, penalties and any other claims damages. The amounts paid as wages (the "Wage  
6 Component") shall be subject to all tax withholdings customarily made from employee's wages and  
7 all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all  
8 amounts will be made subject to backup withholding unless a duly executed W-9 form is received  
9 from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and  
10 required withholdings other than the tax withholdings customarily made from employees' wages and  
11 shall be reported by IRS 1099 forms.

12 Ecolab shall be responsible for paying the employer side share of any taxes owed on the  
13 wage component. The Administrator is responsible to calculate and notify Ecolab of the amount it  
14 must pay to cover these taxes.

15 2. Distributions.

16 Within five (5) business days of the Effective Date, the Claims Administrator will notify  
17 Class Counsel and Ecolab's Counsel of the account where Ecolab shall wire the Gross Settlement  
18 Amount, plus the amount Ecolab must pay to cover the employer's share of taxes on the Gross Wage  
19 Component of the Settlement.

20 a. Ecolab shall wire said amounts within ten (10) business days of receiving notice.

21 b. The Claims Administrator will distribute checks to Class Members (for their  
22 Settlement Awards), to the LWDA (for PAGA penalties), to the Named Plaintiffs (for the Class  
23 Representative Incentive Award approved by the Court, along with their respective Settlement  
24 Awards), and to Class Counsel (for the Class Counsel Fees and Expenses approved by the Court)  
25 within five (5) business days of receipt of payment from Ecolab pursuant to this Paragraph.

26 c. Settlement checks issued to Class Members will expire one hundred and twenty (120)  
27 days from the date they are issued by the Claims Administrator. Any check not cashed within 120  
28 calendar days will be void. Within 30 days after the check stale date the money from the uncashed

1 checks shall escheat to the State of California Unclaimed Wages fund, in the name of the Class  
2 Member.

3 4. Taxes. The Claims Administrator will issue a W-2 Form to each Class Member for  
4 the Wage Component of each Class Member's Individual Gross Settlement Amount made under the  
5 Settlement Agreement, a 1099 form to each Participating Class Member for the Class Member's  
6 Penalty/Interest Payment, a 1099 Form to the Named Plaintiffs for the Class Representative  
7 Incentive Award, a 1099 Form to Class Counsel for the Class Counsel Fees and Expenses, and a  
8 1099 Form to the Claims Administrator for all Claims Administration Costs. All Class Members  
9 covered by this Settlement agree that they are not relying on any representations regarding the tax  
10 allocation or treatment of any amounts paid to them under the terms of this Settlement and agree to  
11 hold Ecolab harmless for any and all tax consequences relating to the allocation of the payments  
12 made under this Settlement.

13 **G. Payments To Class Do Not Trigger Additional or Derivative Payments.** It is  
14 expressly understood and agreed that the receipt of settlement payments will not entitle any Class  
15 Member to additional or derivative compensation or benefits under any company bonus, contest or  
16 other compensation or benefit plan or agreement in place during the period covered by the  
17 Settlement, nor will it entitle any Class Member to any increased retirement, 401k benefits or  
18 matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the  
19 settlement awards provided for in this Agreement are the sole payments to be made by Ecolab to the  
20 Class Members, and that the Class Members are not entitled to any additional or derivative  
21 compensation or benefits as a result of having received the settlement payments (notwithstanding  
22 any contrary language or agreement in any benefit or compensation plan document that might have  
23 been in effect during the period covered by this Settlement).

24 **H. Motion For Preliminary Approval.**

25 1. Class Counsel will file a joint or unopposed motion with the Court (the "Preliminary  
26 Approval Motion") seeking an order approving the Settlement; setting a date for the Final Approval  
27 Hearing; and approving the Notice of Settlement to the Class, Preliminary Approval of the Class  
28 Settlement, and Final Approval Hearing (the "Class Notice") (in the form attached hereto as

1 “Exhibit A”), and the procedure for objecting to the Settlement. Ecolab’s counsel will either jointly  
2 file the Preliminary Approval motion with Class Counsel or, in the case of an unopposed motion,  
3 agree to file a notice of non-opposition to the motion.

4 2. At the hearing on the Preliminary Approval Motion, the Settling Parties will jointly  
5 appear, and support the granting of the motion, and submit a Proposed Order Approving The  
6 Settlement, Approving Notice to Class and Claim Form, and Setting Hearing for Final Approval of  
7 Settlement (the “Proposed Order”). The Proposed Order to be submitted to the Court is attached  
8 hereto as “Exhibit B.”

9 3. Should the Court, after a reasonable opportunity to cure and remedy any stated  
10 deficiencies, ultimately decline to grant preliminarily approval of the Settlement as proposed by the  
11 Parties, then the Settlement is terminated and the parties will revert to their respective positions.

12 **I. Mailing Of Class Notice And Class Forms To Class Members.**

13 After the Court enters its order granting preliminary approval of the Settlement, all Class  
14 Members will be provided with the Notice (completed to reflect the order granting preliminary  
15 approval of the Settlement) by the Claims Administrator as follows:

16 1. Within ten (10) calendar days after the Court grants preliminary approval of the  
17 Settlement, Ecolab will provide to the Claims Administrator updated contact information for the 262  
18 Class Members, including last known addresses and telephone numbers (if available in Ecolab’s data  
19 systems), Social Security numbers, the dates of hire and, if applicable, termination date for each  
20 Class Member. The list of Class Members will be provided to Class Counsel to be used for no  
21 purpose other than to monitor the settlement and to facilitate the Claims Administrator with  
22 management of any updated address information. The data provided to the Claims Administrator,  
23 and the list of Class Members provided to the Claims Administrator and Class Counsel, will be  
24 treated as confidential and will not be disclosed to anyone, except as may be required to applicable  
25 tax authorities, pursuant to Ecolab’s express written consent, by order of the Court, or to carry out  
26 the reasonable steps described in this Settlement to locate missing Class Members.

27 2. Within ten (10) calendar days after receiving the Class Member information from  
28 Ecolab, the Claims Administrator will mail the Class Notice (Exhibit A) to all identified Class

1 Members via first-class regular U.S. Mail, using the last known address information provided by  
2 Ecolab, unless such address is modified by any updated address information that the Claims  
3 Administrator obtains in the course of administration of the Settlement. Prior to completing this  
4 mailing, the Claims Administrator will perform a National Change of Address ("NCOA") search to  
5 confirm the validity of each listed Class Member's address.

6 3. If any Class Notices are returned as undeliverable within thirty (30) calendar days of  
7 the mailing of the Class Notice with a forwarding address, the Claims Administrator shall have five  
8 (5) calendar days to re-mail the Class notice to the forwarding address. If any Class Notices are  
9 returned as undeliverable within thirty (30) calendar days of the mailing of the Class Notice without  
10 a forwarding address, the Settlement Administrator will have five (5) calendar days from receipt of  
11 the returned Class Notices to search for a more current address for the Class Member and to re-mail  
12 the Class Notice to the Class Member. This inquiry shall include a skip-trace search. The Claims  
13 Administrator will be responsible for taking all reasonable steps, consistent with its agreed upon job  
14 parameters, Court orders and fee, as agreed to with Class Counsel and according to the deadlines set  
15 forth in this Settlement, to trace the mailing address of any Class Member for whom a Class Notice  
16 is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a  
17 minimum, the tracking of all undelivered mail, performing an address search for all mail returned  
18 without a forwarding address, and promptly re-mailing the Class Notice and Claim Form to Class  
19 Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement  
20 Administrator will note for its own records the date and address of each such re-mailing and so  
21 notify Class Counsel and Ecolab's Counsel. The obligation to trace and resend returned Class  
22 Notices shall cease after two mailings or thirty (30) calendar days after the initial mailing, whichever  
23 occurs first. The time period to respond may not be extended on account of a returned or  
24 undeliverable mailing.

25 4. The Claims Administrator shall provide weekly status reports to counsel for the  
26 Parties, including: (a) the number of Class Notices mailed; (b) the number of Claim Forms filed; (c)  
27 the number of objections filed; and (d) the number of Requests for Exclusion filed.  
28

1           5. No later than thirty (30) calendar days before the Final Approval Hearing, the  
2 Settlement Administrator will serve on Class Counsel and Ecolab's counsel, for filing with the Court  
3 in support of Plaintiff's motion for final approval of the Settlement, a declaration of due diligence  
4 setting forth its compliance with its obligations under this Settlement.

5           **J. Objections To Settlement.**

6           Class Members may submit objections to the Settlement pursuant to the following  
7 procedures:

8           1. The Class Notice will provide that Class Members who wish to object to the  
9 Settlement must file with the Court and serve on the Claims Administrator and Counsel for the  
10 Settling Parties, not later than forty-five (45) calendar days after the date that the Claims  
11 Administrator first mails the Class Notice ("Objection Deadline"), a written statement objecting to  
12 the Settlement and setting forth the grounds for the objection. The written statement of objection  
13 must indicate whether the Class Member intends to appear and object to the Settlement at the Final  
14 Approval Hearing, and the failure to so indicate will constitute a waiver of the right to appear at the  
15 Final Approval Hearing.

16           2. A Class Member who does not file and timely serve an objection in the manner and  
17 by the Objection Deadline specified above will be deemed to have waived all objections and will be  
18 foreclosed from making any objections to the Settlement, whether by appeal or otherwise.

19           3. If a Class Member who has timely filed an objection to the Settlement files a Notice  
20 of Appeal of the judgment within the time period prescribed by law, Ecolab shall not be required to  
21 fund any portion of the Gross Maximum Settlement Amount, and the Claims Administrator shall not  
22 distribute or pay any monies until the appeal(s) are finally resolved in favor of the settlement or  
23 dismissed with prejudice.

24           **K. Resolution of Class Member Disputes Over Compensable Weeks Worked.**

25           1. If a Class Member disputes the number of Compensable Weeks Worked stated for  
26 that Class Member in the Claim Form, the Class Member must ask the Claims Administrator to  
27 resolve the matter by submitting in writing under penalty of perjury the number of Compensable  
28 Weeks Worked that the Class Member claims to have actually worked for Ecolab in California in a



1 covered position during the Class Period. Such Class Members also will be asked to submit all  
2 supporting documentation they may have. If such a dispute arises, Ecolab will manually review its  
3 payroll and personnel records to verify the correct number of Compensable Weeks Worked.  
4 Ecolab's records shall have a rebuttable presumption of correctness.

5 2. After consultation with Class Counsel and Counsel for Ecolab, the Claims  
6 Administrator will make a determination of the Class Member's Compensable Weeks Worked. This  
7 determination shall be final and binding on the Settling Parties and the Class Member unless a  
8 request for review thereof is submitted by Class Counsel (on behalf of the affected Class Member) or  
9 Counsel for Ecolab to the Court, which will make a final decision at the Final Approval Hearing, and  
10 is non-appealable.

11 **L. No Solicitation of Objections or Requests for Exclusion.** Neither the Settling  
12 Parties nor their respective counsel or management will solicit or otherwise encourage any Class  
13 Member, directly or indirectly, to object to the Settlement, or appeal from the Judgment.

14 **M. Additional Briefing and Final Approval.**

15 1. As soon as practicable following the deadline for the filing of claims, Class Counsel  
16 will file with the Court a motion for final approval of the Settlement and a memorandum in support  
17 of his motion, which Ecolab agrees it will not oppose so long as the motion is in all respects  
18 consistent with the terms of this Settlement. While the notice period is pending, the Class Members  
19 and Class Counsel will also move for an award of the Class Representative Incentive Award and  
20 Class Counsel Fees and Expenses pursuant to and in accordance with the terms of this Settlement,  
21 with a memorandum in support of their motion, which Ecolab agrees it will not oppose so long as  
22 the motion is in all respects consistent with the terms of this Settlement.

23 2. Not later than five (5) court days before the Final Approval Hearing, the Settling  
24 Parties may file, jointly or separately, a reply in support of the motion for final approval of the  
25 Settlement as may be necessary or helpful to the Court regarding the subject matter of the Final  
26 Approval Hearing. In addition, the Settling Parties and Class Counsel may file replies in support of  
27 the motions for the Class Representative Incentive Award and the Class Counsel Fees and Expenses  
28 as may be necessary or helpful to the Court regarding the subject matter of the motions.



1           3.       Either Settling Party may terminate this Settlement by giving written notice to the  
2 other Settling Party (through its counsel) no later than twenty (20) calendar days after receiving  
3 notice that one of the following has occurred: (i) the Court declines to enter the Preliminary  
4 Approval Order, the Final Approval Order or final judgment in substantially the form submitted by  
5 the Parties; (ii) the Settlement does not become final because of any appellate court action; or (iii)  
6 the Court's final approval of the Settlement is reversed or materially modified on appellate review.

7           4.       In the event termination of this Settlement is provided in accordance with the  
8 foregoing, this Settlement will become and shall be considered null and void, and it will have the  
9 following effects: (i) the Settling Parties will have no further obligations under the Settlement; (ii)  
10 Ecolab shall have no obligation to make any payments to any person, party, Class Member or  
11 attorney that otherwise would have been owed under this Settlement, except that Ecolab will pay the  
12 Claims Administrator's reasonable fees and expenses incurred as of the date that the Settlement is  
13 terminated; (iii) the Preliminary Approval Order, Final Approval Order and Judgment, including any  
14 order of class certification, shall be vacated; (iv) the Settlement and all negotiations, statements and  
15 proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom  
16 shall be restored to their respective positions in the Action prior to the Settlement; and (v) neither  
17 this Settlement nor any ancillary documents, actions, statements or filings in furtherance of  
18 settlement (including all matters associated with the mediation) shall be admissible or offered into  
19 evidence in the Action or any other case or proceeding for any purpose whatsoever.

20           5.       Upon final approval of the Settlement by the Court at or after the Final Approval  
21 Hearing, the Settling Parties will present a Final Judgment for the Court's approval and entry. A  
22 copy of the Proposed Final Judgment is attached hereto as "Exhibit C." After entry of the Final  
23 Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for  
24 purposes of: (i) enforcing this Settlement, (ii) addressing any claims administration matters that may  
25 arise; and (iii) addressing such post-Judgment matters as may be appropriate under court rules or  
26 applicable law.

27           6.       Ecolab shall promptly prepare a Notice of Settlement of Class Action in this matter,  
28 pursuant to the Class Action Fairness Act [28 U.S.C. § 1715] ("CAFA Notice").

1           **N. Dispute Resolution.** Any disputes not resolved by the Claims Administrator or the  
 2 Settling Parties will be resolved by the Court. Before any such resort to the Court, counsel for the  
 3 Settling Parties will confer in good faith in an attempt to resolve the dispute.

4           **O. Waiver of Right to Appeal.** The Settling Parties agree to waive all appeals from the  
 5 Court's Final Approval of this Settlement, except that Class Counsel may appeal any reduction in the  
 6 Class Counsel Fees and Expenses. However, any reduction in the Class Counsel Fees and Expenses,  
 7 and/or any reduction to the requested Class Representative Incentive Awards, does not constitute  
 8 grounds to terminate or void the Settlement.

9           **P. Release of Claims.**

10           1. Release of Claims By Class Members. In exchange for the consideration,  
 11 undertakings, and covenants undertaken by Ecolab in this Settlement, all Class Members will  
 12 release Ecolab, its present and former parent companies, subsidiaries, related or affiliated companies,  
 13 joint ventures, partners, shareholders, officers, directors, employees, agents, attorneys, insurance  
 14 carriers, successors and assigns, and any individual or entity which could be jointly liable with  
 15 Ecolab (all of whom are hereinafter referred to as "Released Parties"), from any and all claims,  
 16 debts, liabilities, demands, obligations, guarantees costs, expenses, attorneys' fees, damages, causes  
 17 of action and allegations of any nature, that were alleged or that could have been alleged in the  
 18 Complaint based on the facts alleged therein and that arose or could have arisen out of the facts  
 19 alleged therein, including the claims brought and the claims that could have been brought under state  
 20 or federal law in any forum, including, but not limited to, all claims for wages and related penalties  
 21 and benefits that were alleged in the Complaint and First Amended Complaint or which could have  
 22 been alleged under California law or the Fair Labor Standards Act ("FLSA") based on the facts  
 23 alleged therein, during the Class Period, as defined above, and up through the date of Preliminary  
 24 Approval of the settlement or October 15, 2016, whichever occurs first, including, without  
 25 limitation: (1) failure to pay minimum wage and/or overtime compensation for all hours worked; (2)  
 26 violation of the FLSA; (3) meal and rest period violations; (4) penalties under the Private Attorney  
 27 General Act; (5) unfair competition in violation of Business and Professions Code §§ 17200 *et seq.*  
 28 based on the alleged violations of the California Labor Code ; and (6) any other claim for penalties

(including but not limited to California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 2699, et seq. or any applicable Wage Order), premium pay or liquidated damages of any nature whatsoever, arising out of any conduct, events, or transactions occurring during the Class Period, including without limitation, interest, attorneys' fees and costs ("all of which are hereinafter referred to as "Released Claims"). On the back of each check issued to Class Members there will be language that by cashing the check the Class Member understands and agrees that s/he is releasing all Released Claims, including Claims under the Fair Labor Standards Act.

As of the Effective Date, Named Plaintiffs and the Settlement Class release the Released Parties from the Released Claims in exchange for the consideration provided by this Settlement. The Named Plaintiffs may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

2. Claims Not Released By Class Members. To the extent that any Participating Class Member is also a member of the certified class in the case of *Ross v. Ecolab Inc.*, Northern District of California Case No. 4:13-cv-05097-PJH, they do not release any such claims that have been settled on their behalf in the *Ross* action.

3. No DLSE/DOL Claims For Monetary Relief. All Class Members shall be enjoined from seeking any monetary relief/award by filing any claims with the Division of Labor Standards and Enforcement or Department of Labor, or from initiating other proceedings regarding claims released under this Settlement pending final approval of the Settlement by the Court.

4. Complete And General Release By Martino And Amoroso. In addition to the releases of the claims enumerated above, including but not limited to the Released Claims, the named

1 plaintiffs and current Class Representatives John Martino and Adonis Amoroso hereby provide  
2 Ecolab and all of the Released Parties a complete and general release of all known and unknown  
3 claims, including but not limited to any claims arising out of their employment or, due to the ending  
4 of their employment. This complete and general release applies to any and all claims, without  
5 limitation, against Ecolab and all of the Released Parties. John Martino and Adonis Amoroso each  
6 expressly acknowledge and waive all of the rights afforded to them under California Civil Code §  
7 1542, which reads as follows: "A general release does not extend to claims which the creditor does  
8 not know or suspect to exist in his or her favor at the time of executing the release, which if known  
9 by him or her must have materially affected his or her settlement with the debtor."

10 5. John Martino and Adonis Amoroso agree that they will not reapply to work for  
11 Ecolab in the future and that, in the event of their application in the future, Ecolab can decline to hire  
12 them pursuant to the terms of this Settlement.

13 **Q. Publicity.**

14 1. Named Plaintiffs and Class Count agree not to issue a press release or otherwise  
15 notify the media about the terms of the Settlement or advertise or market any of the terms of the  
16 Settlement through written, recorded or electronic communications. Named Plaintiffs and Class  
17 Counsel further agree that if contacted regarding this case, they will state only that the lawsuit exists  
18 and has been resolved.

19 2. Nothing herein shall be interpreted as preventing any good-faith communications by  
20 any Counsel and/or any Parties with the Court, the Class Members, or the Claims Administrator.

21 **R. Fair, Adequate And Reasonable Settlement.** This Settlement was reached at  
22 mediation after years of litigation and extensive negotiations. The Settling Parties believe and agree  
23 that this Settlement is a fair, adequate, and reasonable resolution of the Action and have arrived at  
24 this Settlement in arms-length negotiations, taking into account all relevant factors, present and  
25 potential, and will so represent it to the Court.

26 **S. Dismissal Upon Final Approval.** The Settling Parties agree that, upon final  
27 approval of the Settlement by the Court, the Action will be dismissed in its entirety with prejudice  
28 pursuant to the Proposed Final Judgment and Order of Dismissal attached hereto as Exhibit C.

1           **T. No Admission Of Liability.** Ecolab denies any and all alleged wrongdoing or the  
2 violation of any rights of the Named Plaintiffs and/or Class Members. By entering into this  
3 Settlement, Ecolab does not admit, and in fact specifically disclaims, the violation of any law or  
4 regulation. This Settlement is entered into solely for the purpose of compromising highly disputed  
5 claims. Nothing in this Settlement is intended or will be construed as an admission of any liability  
6 or wrongdoing by Ecolab, or as an admission by the Class Members that any of their claims were  
7 non-meritorious or that any defense asserted by Ecolab was meritorious. This Settlement and the  
8 fact that the Settling Parties were willing to settle the Action and have entered into this Settlement  
9 will have no bearing on, and will not be admissible in connection with, any litigation, other than as is  
10 necessary to enforce the terms of this Settlement.

11           **U. Miscellaneous Terms.**

12           1. Integrated Agreement. After it is signed and delivered by all Parties and their  
13 counsel, this Settlement and its exhibits will constitute the entire agreement between the Settling  
14 Parties relating to the terms of Settlement, and will supersede any prior or contemporaneous oral  
15 representations, warranties, covenants, or inducements made to any Settling Party concerning this  
16 Settlement or its exhibits, including the Settlement Terms.

17           2. Execution in Counterparts. This Settlement may be executed in one or more  
18 counterparts and by facsimile or PDF version. All executed counterparts, and each of them, will be  
19 deemed to be one and the same instrument, provided that counsel for the Settling Parties will  
20 exchange between themselves original signed counterparts. Facsimile or PDF signatures will be  
21 accepted if the original signature is made available upon request within seven days. Any executed  
22 counterpart will be admissible in evidence to prove the existence and contents of this Settlement.

23           3. Modification of Settlement. This Settlement, and any and all parts of it, may be  
24 amended, modified, changed, or waived only by an express written instrument signed by all Settling  
25 Parties or their successors-in-interest.

26           4. Settlement Binding on Successors. This Settlement will be binding upon, and inure  
27 to the benefit of, the successors of each of the Settling Parties.

28           5. Applicable Law. All terms and conditions of this Settlement and its exhibits will be



1 governed by and interpreted according to the laws of the State of California, without giving effect to  
2 any conflict of law or choice of law principles.

3 6. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,  
4 subject to necessary compliance with the Court's orders, except such proceedings necessary to  
5 implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be  
6 conducted by the Court.

7 7. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant  
8 and represent they are expressly authorized by the Parties whom they represent to negotiate this  
9 Agreement and to take all appropriate actions required or permitted to be taken by such Parties  
10 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to  
11 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other  
12 and use their best effort to effect the implementation of the Settlement. In the event the Parties are  
13 unable to reach agreement on the form or content of any document needed to implement the  
14 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of  
15 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The  
16 persons signing this Agreement on behalf of Defendant represent and warrant that they are  
17 authorized to sign this Agreement on behalf of Defendant. Plaintiffs each represent and warrant that  
18 he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,  
19 covered by this Settlement to a third-party.

20 8. Notices. Unless otherwise specifically provided herein, all notices, demands or other  
21 communications given hereunder shall be in writing and shall be deemed to have been duly given as  
22 of the third business day after mailing by United States registered or certified mail, return receipt  
23 requested, addressed as follows:

24 To Class Counsel:

25 Alejandro Gutierrez, Esq.  
26 HATHAWAY, PERRETT, WEBSTER, POWERS,  
27 CHRISMAN & GUTIERREZ  
28 5450 Telegraph Road, Suite 200  
Ventura, CA 93006  
Telephone: (805) 644-7111



Brian D. Hefelfinger, Esq.  
STRAUSS & PALAY APC  
121 North Fir Street, Suite F  
Ventura, CA 93001  
Telephone (805) 641-6600

To Ecolab:

Jody A. Landry, Esq.  
LITTLER MENDELSON, P.C.  
501 West Broadway, Suite 900  
San Diego, CA 92101  
Telephone: (619) 232-0441  
Facsimile: (619) 232-4302

9. Cooperation in Drafting. The Settling Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Settling Party on the basis that the Settling Party was the drafter or participated in the drafting.

IT IS SO AGREED:

PLAINTIFFS AND THE CLASS

DATED: 6/8, 2016

By: John A. Martino  
JOHN MARTINO

DATED: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
ADONIS AMOROSO

DATED: 6/13, 2016

HATHAWAY, PERRETT, WEBSTER, POWERS,  
CHRISMAN & GUTIERREZ

By: Alejandro P. Gutierrez  
ALEJANDRO P. GUTIERREZ

Attorneys for the Certified Class

Brian D. Hefelfinger, Esq.  
STRAUSS & PALAY APC  
121 North Fir Street, Suite F  
Ventura, CA 93001  
Telephone (805) 641-6600

To Ecolab:

Jody A. Landry, Esq.  
LITTLER MENDELSON, P.C.  
501 West Broadway, Suite 900  
San Diego, CA 92101  
Telephone: (619) 232-0441  
Facsimile: (619) 232-4302

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IT IS SO AGREED:

PLAINTIFFS AND THE CLASS

DATED: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
JOHN MARTINO

DATED: 6/8, 2016

By:   
ADONIS AMOROSO

DATED: \_\_\_\_\_, 2016

HATHAWAY, PERRETT, WEBSTER, POWERS,  
CHRISMAN & GUTIERREZ

By: \_\_\_\_\_  
ALEJANDRO P. GUTIERREZ

Attorneys for the Certified Class

1 DATED: 06 / 21, 2016

STRAUSS & PALAY APC

By: 

BRIAN D. HEFELFINGER

Attorneys for the Certified Class

ECOLAB INC.

7 DATED: June 20, 2016

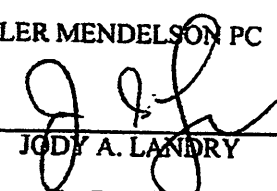
By: 

MICHAEL A. HICKEY, Executive Vice President  
and President, Global Institutional

11 APPROVED AS TO FORM:

LITTLER MENDELSON PC

15 DATED: 6/20, 2016

  
JODY A. LANDRY

Attorneys for Ecolab Inc.

17 Firmwide: 140882923.1 057118.1183

*[EXHIBIT A TO JOINT STIPULATION]*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JOHN MARTINO, an individual, for himself  
and those similarly situated; ADONIS  
AMOROSO, an individual, for himself and  
those similarly situated; and ROES 1 through  
30,000 and the proposed Class,

Plaintiffs,

vs.

ECOLAB INC., a Delaware Corporation; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO: 5:14-cv-04358-VC

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT AND FAIRNESS HEARING**

TO: All Class Members, who are all current and former Territory Managers, and/or Hospitality  
Territory Managers (herein, the "TMs") employed by Defendant Ecolab Inc. in California at  
any time from June 4, 2010 to February 16, 2016, unless an individual opted out of the Action.

**THIS NOTICE AFFECTS YOUR RIGHTS.**

**PLEASE READ THIS NOTICE CAREFULLY.**

///

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR [REDACTED], 2016, 2016 AT [REDACTED] A.M. BEFORE THE HONORABLE VINCE CHHABRIA, UNITED STATES DISTRICT COURT JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE BEEN BROUGHT ON YOUR BEHALF.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at <http://www.strausspalay.com/class-actions/martino-v-ecolab/>, by contacting class counsel at [brian@strausslawyers.com](mailto:brian@strausslawyers.com), by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, [REDACTED] [REDACTED], between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

### **ESTIMATED INDIVIDUAL SETTLEMENT AMOUNT**

Based on your total full workweeks worked for ECOLAB as an TM during the Class Period, your estimated payment is \$ [REDACTED] ("Individual Settlement Amount"). This estimated amount is only an estimate. The actual amount of your Individual Settlement Amount may increase or decrease based on several factors, including the final amounts approved by the Court and disputes about workweeks raised by other Class Members. As a result you may receive a smaller, or larger, payment. Please read all of this notice packet for further details regarding the settlement.

#### **I. INTRODUCTION**

On June 4, 2014, Plaintiffs John Martino and Adonis Amoroso filed a lawsuit against defendant Ecolab Inc. (Ecolab) for damages, interest, penalties and other monetary relief for unpaid regular and overtime compensation under the California Labor Code in the Superior Court of California, County of Santa Clara. The action was removed to federal court by Ecolab, to the U.S. District Court, Northern District of California, on or about September 26, 2014. The U.S. District Court certified the case as a class action on February 16, 2016.

Class Counsel in this matter is Alejandro P. Gutierrez, Esq. of the law firm of Hathaway, Perrett, Webster, Powers, Chrisman, and Gutierrez, and Daniel J. Palay and Brian D. Hefelfinger of Strauss & Palay, APC.

In this lawsuit, Plaintiffs Martino and Amoroso, individually and on behalf of other members of the Certified Class, allege that they worked for Ecolab in California and were entitled to overtime compensation for hours worked in excess of eight (8) in one day or forty (40) per week, but that Ecolab failed to pay them overtime premium pay for those overtime hours worked. Ecolab denies these allegations.

A tentative settlement of the case has been reached with Ecolab. The settlement applies to all members of the Certified Class.

## II. THE REASON YOU HAVE RECEIVED THIS NOTICE

You are a member of the Certified Class as you previously received notice of this matter earlier this year and did not opt-out of the case by the deadline set by the Court. Your rights will be affected because the current Class Representatives, John Martino and Adonis Amoroso, and Ecolab ("the Parties") have tentatively settled the lawsuit. Pursuant to that tentative settlement, the Court is considering the entry and final approval of the settlement. By preliminary approval of the proposed settlement on [REDACTED], 2016, the Court has preliminarily determined that this lawsuit could be settled against defendant.

You are hereby notified that:

1. A settlement of the claims of the Certified Class has been proposed by Class Representatives Plaintiffs Martino and Amoroso, and Class Counsel, on the one hand, and Ecolab, on the other.
2. The proposed Settlement has been submitted to the Court and has received preliminary approval.
3. You and any other persons in the Certified Class have the right to object to the proposed settlement by following the procedures in Parts V of this notice.
4. A hearing to finally approve the settlement is scheduled for [REDACTED], 2016 at [REDACTED] A.M. in Courtroom 4 (17<sup>th</sup> Floor), at the United States Courthouse, located at [REDACTED] San Francisco, California, before the Honorable Vince Chhabria, U.S. District Court Judge.

At the hearing, any member of the Certified Class may appear and object to the proposed settlement. However, no such person shall be heard at the hearing, and no papers or written briefs shall be considered, unless the procedures set forth in Part V of this Notice have been followed. You should read that part carefully. Certified Class members who do not make objections in the manner provided in Part V of this Notice shall be deemed to have waived such objections.

This notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in these lawsuits. This notice is sent for the sole purpose of informing you of the pendency of this lawsuit and the terms of the proposed settlement so that you may make appropriate decisions. In the event of any conflicts between this notice and the Settlement Agreement, the terms of the Settlement Agreement shall govern. You may obtain a copy of the Settlement Agreement by contacting Class Counsel, who are identified in Part VII below.

## III. NATURE OF THE LAWSUIT

In this case, Plaintiffs sued Ecolab for damages for nonpayment of overtime for hours worked in excess of eight (8) in one workday or forty (40) in a workweek and for interest and penalties resulting from these violations. Plaintiffs have additionally sued Ecolab for civil penalties for various violations of the California Labor Code, as permitted by the Private Attorneys General Act of 2004, Lab. Code § 2699 *et seq.* ("PAGA"). Ecolab denied and continues to deny all of the allegations made by the Plaintiffs. Ecolab asserts that Territory Managers and Hospitality Territory Managers should



1 not be treated as hourly employees, but instead are properly paid on a salary plus commission basis,  
2 and are therefore properly exempt from and not entitled to overtime, and are not owed any overtime  
3 wage or penalties.

4 The Plaintiffs and Ecolab have tentatively settled this lawsuit. The Settlement has received  
5 preliminary approval of the Court, subject to notice being provided to the members of the Classes and  
6 final approval by the Court after a public hearing. This proposed settlement is described in the next  
7 section.

8 As a member of the Certified Class, you will receive money from the proposed Settlement if  
9 the Court grants final approval. If the Settlement Agreement is approved you will be bound by its  
10 terms including the release of claims. If the proposed settlement is not approved, then the offer of  
11 settlement will be deemed withdrawn, and the case will proceed in Court as if no settlement had ever  
12 been made.

#### 13 **IV. SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT** 14 **AGREEMENT**

15 For purposes of settlement, and without admitting any liability, Ecolab has agreed to provide  
16 certain relief to persons in the Certified Class in exchange for a release of claims. The following is  
17 only a summary of the relief contained in the proposed Settlement. In the event there are any conflicts  
18 between this Notice and the Settlement Agreement, the terms of the Settlement shall govern. For a  
19 copy of the proposed Settlement Agreement, you may contact Class Counsel, whose names, addresses,  
20 and telephone numbers are listed below in Part VII. The relief granted by the proposed Settlement  
21 Agreement is summarized as follows:

- 22 1. Ecolab will pay the total sum ("Sum") of Twenty-One Million Dollars (\$21,000,000.00), less  
23 attorneys' fees and costs awarded to Class Counsel, any enhancement awarded to the Class  
24 Representatives John Martino and Adonis Amoroso, the costs of the appointed Claims  
25 Administrator, and a payment of \$100,000.00 to the California Labor Workforce and  
26 Development Agency (LWDA).
- 27 2. Out of the Sum, Ecolab will pay reasonable attorneys' fees in a maximum amount not to  
28 exceed \$6,300,000 (30% of the Sum) and actual costs incurred by Class Counsel (not to exceed  
\$50,000). All payments for attorneys' fees and costs will be paid from the Sum, which will  
reduce any payments made to the Certified Class. Class Counsel will apply to the court for  
approval of their attorneys' fees and costs at the hearing scheduled for [REDACTED], 2016  
at [REDACTED] A.M.
3. Current Class Representatives John Martino and Adonis Amoroso will apply to the Court at the  
hearing scheduled for [REDACTED], 2016 for an enhancement payment not to exceed  
\$15,000 each in recognition of the time and efforts each has expended in this case on behalf of  
the Certified Class.
4. The Settlement provides monetary compensation to Certified Class members for unpaid  
overtime compensation, interest thereon, and PAGA penalties, as allowed under California  
state law.

5. Any Certified Class member has the right to object to the proposed settlement by following the procedures set forth in Part V below.

Based upon the equitable formula that has been devised, there will be substantial differences among Certified Class members as to the amount each individual participating Certified Class member will receive in settlement. The formula provides that each Certified Class Member will receive a portion of the settlement in proportion to the number of weeks that he/she worked for Ecolab as a TM compared to all the weeks worked by all the Certified Class Members as a TM from the time period of June 4, 2010 through the date of preliminary approval of the Settlement. Monies paid pursuant to the Settlement are taxable; Ecolab will make all lawful payroll deductions from 50% of each Class Member's payment, while the remaining 50% will be paid without payroll deductions.

#### **V. HEARING AND PROCEDURE FOR OBJECTING TO THE SETTLEMENT AGREEMENT**

If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the hearing at which the Court will consider final approval of the Settlement Agreement. If you object to the proposed Settlement Agreement, you MUST take the following steps. Your failure to do so will be deemed a waiver of your objections and will result in a foreclosure of your right to make any objections to the Settlement, whether by appeal or otherwise:

A. So that it is postmarked by \_\_\_\_\_, 2016, you MUST mail any objection by first class postage the Court at United States District Court, Northern District of California, \_\_\_\_\_.

B. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

C. All written objections and supporting papers must (a) clearly identify the case name and number (*Martino et al v. Ecolab Inc.*, Case Number 5:14-cv-04358-PSG), (b) be submitted to the Court either by mailing them to Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before \_\_\_\_\_, 2016."

#### **VI. CLASS COUNSEL**

If you have any questions concerning the proposed Settlement Agreement, or this Notice, you may contact either of the following Class Counsel:

Alejandro P. Gutierrez, Esq. at the law firm of Hathaway, Perrett, Webster, Powers, Chrisman, and Gutierrez, 5450 Telegraph Road, Suite 200, Ventura, California 93003, telephone (805) (805) 644-7111, e-mail address: agutierrez@hathawaylawfirm.com; or

1 Brian D. Hefelfinger, Esq. at Strauss & Palay, APC, 121 N. Fir Street, Suite F, Ventura,  
2 California 93001, telephone (805) 641-6600, email address: brian@strausspalay.com.

3 **PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR**  
4 **THE OFFICE OF THE CLERK FOR INFORMATION REGARDING**  
5 **THIS SETTLEMENT OR THE CLAIM PROCESS.**  
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**EXHIBIT A****[name/ID#]**

ECOLAB's records indicate that during the applicable time period (June 4, 2010 through [REDACTED], 2016), you worked [REDACTED] full workweeks as a California Territory Manager or Hospitality Territory Manager ("TM") for ECOLAB. If you disagree with the full workweeks figure as set forth above, you must notify the Claims Administrator in writing by the deadline of [REDACTED], 2016 and attach documentation supporting your belief. Failure to provide this information and satisfactory supporting documentation of the workweeks you believe you worked for ECOLAB during the applicable time period will result in any claim you submit being based solely on ECOLAB's records.

**ESTIMATED CLAIM AMOUNT**

Based on your total full workweeks worked for ECOLAB during the Class Period, your estimated payment is \$ [REDACTED] ("Individual Settlement Amount"). This estimated amount is only an estimate. The actual amount of your Individual Settlement Amount may increase or decrease based on several factors, including the final amounts approved by the Court and disputes about workweeks raised by other Class Members. As a result you may receive a smaller, or larger, payment.

**QUESTIONS**

If you have questions, please call or write to CPT Group, Inc. at the telephone number and address shown on page 1 above.

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[EXHIBIT B TO JOINT STIPULATION]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOHN MARTINO, an individual, for himself  
and those similarly situated; ADONIS  
AMOROSO, an individual, for himself and  
those similarly situated; and ROES 1 through  
30,000 and the proposed Class,

Plaintiffs,

vs.

ECOLAB INC., a Delaware Corporation; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO: 5:14-cv-04358-VC

CLASS ACTION

**[PROPOSED]  
ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

The Court has received the Joint Stipulation of Class Action Settlement and Release (hereinafter sometimes referred to as the "Settlement" or "Agreement"), entered into between the Plaintiffs and Class Representatives for the Certified Class in this matter, on the one hand, and Defendant Ecolab Inc. ("Ecolab"), on the other hand, and their respective counsel of record.

1 After reviewing the Agreement, and the other documents filed in support of the Motion for  
2 Preliminary Approval of Class Action Settlement, and having considered the arguments by the  
3 respective parties, THE COURT HEREBY ORDERS THE FOLLOWING:

4 **ORDERS**

5 1. The Court hereby grants preliminary approval of the proposed Settlement upon the  
6 terms and conditions set forth in the Agreement. The Court preliminarily finds that the terms of the  
7 proposed Settlement are fair, adequate and reasonable, and that they comply with Rule 23(e) of the  
8 Federal Rules of Civil Procedure ("FRCP"). The Court hereby adopts and incorporates by this  
9 reference the recitals, terms and conditions of the Settlement.

10 2. The Court preliminarily finds that the Settlement is the product of serious, informed,  
11 non-collusive negotiations conducted at arm's-length by the Parties. In making these preliminary  
12 findings, the Court considered, among other factors, the potential damages claimed in the lawsuit on  
13 behalf of Plaintiffs and members of the Certified Class (which totals 262 individuals), Defendant's  
14 potential liability, the risks of continued litigation including trial outcome, delay and potential appeals,  
15 the substantial benefits available to the Certified Class as a result of the Settlement, the Parties'  
16 participation in mediation with an experienced class action mediator, and the fact that the proposed  
17 Settlement represents a compromise of the Parties' respective positions rather than the result of a  
18 finding of liability at trial. The Court further preliminarily finds that the terms of the Settlement have  
19 no obvious deficiencies and do not improperly grant preferential treatment to any individual member  
20 of the Certified Class.

21 3. The Court approves the proposed manner of the notice of Settlement set forth in the  
22 Agreement. The Court also approves the size and contents of the Notice of Proposed Class Action  
23 Settlement attached hereto as Exhibit 1.

24 4. The Court finds that the proposed manner of the notice of Settlement set forth in the  
25 Agreement (and the Notice of Proposed Class Action Settlement referenced therein and which the  
26 Court approves of, as set forth in paragraph 3, above) constitutes the best notice practicable under the  
27 circumstances and is in full compliance with the United States Constitution and the requirements of  
28 due process. The Court further finds that the notice fully and accurately informs the Certified Class of



1 all material elements of the lawsuit and proposed class action Settlement, , and each Certified Class  
2 Member's right and opportunity to object to the proposed class action Settlement and be heard at the  
3 final approval (fairness) hearing.

4 5. The proposed plan for mailing the Notice of Proposed Class Action Settlement and  
5 Claim Form by first-class mail to the Certified Class Members' last-known address is an appropriate  
6 method, reasonably designed to reach all individuals who would be bound by the Settlement. There is  
7 no alternative method of sending the Notice to the Certified Class that would be more practicable, and  
8 any more reasonably likely to notify the Class Members. The proposed Notice of Proposed Class  
9 Action Settlement and the notice plan set forth in the Settlement are the best practicable notice under  
10 the facts and circumstances of this case.

11 6. The Parties are ordered to carry out the Settlement according to the terms of the  
12 Settlement Agreement.

13 7. The Court appoints CPT Group, Inc. ("CPT") as the Claims Administrator. Promptly  
14 following entry of this order, CPT will prepare a final version of the Notice of Proposed Class Action  
15 Settlement and Claim Form, incorporating into it the relevant dates and deadlines set forth in this  
16 Order and the Settlement Agreement and will commence the notice process in accordance with the  
17 scheduling set forth herein.

18 8. The deadline for filing objections to the Settlement shall be           , 2016, which is  
19 forty-five (45) days from the mailing of the Notice of Settlement, in conformity with the Settlement  
20 Agreement and this Order.

21 9. Any Certified Class Member who desires to object to the Settlement must file with the  
22 Court, not later than           , 2016 (the "Objection Deadline"), a written statement objecting to the  
23 Settlement and setting forth the grounds for the objection. The written statement of objection must  
24 indicate whether the Certified Class Member intends to appear and object to the Settlement at the Final  
25 Approval Hearing, and the failure to so indicate will constitute a waiver of the right to appear at the  
26 Final Approval Hearing. A Certified Class Member who does not timely file an objection in the  
27 manner and by the Objection Deadline specified above will be deemed to have waived all objections  
28 and will be foreclosed from making any objections to the Settlement, whether by appeal or otherwise.

1           10.     Class Counsel's motion for an award of attorney's fees and costs and the Class  
2 Representatives' motion for a service enhancement shall be filed no later than fourteen (14) calendar  
3 days before the final approval (i.e. "final fairness") hearing.

4           11.     The Court will hold a final approval hearing on \_\_\_\_\_, 2016, at \_\_\_\_\_ a.m. in  
5 Courtroom \_\_\_\_\_, to consider the fairness, reasonableness and adequacy of the proposed Settlement  
6 as well as the award of attorney's fees and costs to Class Counsel and incentive (service) awards to the  
7 Class Representatives. The Court reserves the right to adjourn or continue the final approval (fairness)  
8 hearing without further notice to the Settlement Class members.

9  
10  
11           **IT IS SO ORDERED.**

12           Dated: \_\_\_\_\_

13           \_\_\_\_\_  
14           Hon. Vince Chhabria  
15           United States District Court Judge  
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EXHIBIT 1  
TO PROPOSED ORDER

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[EXHIBIT C TO JOINT STIPULATION]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOHN MARTINO, an individual, for himself  
and those similarly situated; ADONIS  
AMOROSO, an individual, for himself and  
those similarly situated; and ROES 1 through  
30,000 and the proposed Class,

Plaintiffs,

vs.

ECOLAB INC., a Delaware Corporation; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO: 5:14-cv-04358-VC

CLASS ACTION

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH  
PREJUDICE**

On \_\_\_\_\_, 2016, Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Service Award (the "Final Approval Motion") came before the Court for hearing pursuant to the Order of this Court, ECF No. \_\_\_, on the application of Plaintiffs John Martino and Adonis Amoroso for approval of the comprehensive settlement terms set forth in the Joint Stipulation of Class Action Settlement and Release (hereinafter the "Settlement" or the "Stipulation," Docket No. \_\_\_).

For the reasons stated in its Order dated \_\_\_\_\_, 2016 (hereinafter the "Final Approval Order," ECF Docket No. \_\_\_), this Court granted the Final Approval Motion.

Pursuant to Federal Rule of Civil Procedure 58, the Court now HEREBY ORDERS ENTRY OF JUDGMENT as follows:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

3. All Parties are bound by this Final Judgment and Order of Dismissal with Prejudice and by the Stipulation. The parties shall comply with the terms and conditions of the Stipulation and of the Final Approval Order. Defendant ECOLAB INC. shall pay the settlement funds through the procedure described in the Stipulation.

4. The Court previously certified the Action as a class action under Federal Rule of Civil Procedure 23. The Class, which is made up of 262 individuals, is defined as set forth in the Stipulation.

5. The Court approves the following payments, after which the remaining settlement funds shall be distributed to the Participating Class Members pursuant to the terms of the Stipulation and Final Approval Order:

- California Labor and Workforce Development Agency: \$\_[per Court]\_;
- Plaintiff JOHN MARTINO (as a Service Award): \$\_[per Court]\_;
- Plaintiff ADONIS AMOROSO (as a Service Award): \$\_[per Court]\_;
- Class Counsel (as attorney's fees): \$\_[per Court]\_;
- Class Counsel (as litigation costs and expenses): \$\_[per Court]\_; and
- CPT Group, Inc. (for claims administration fees): \$\_[per Court]\_.

6. Except as to any individual claim of those persons who have validly and timely requested exclusion from the Class, the Action is dismissed with prejudice.

7. Upon the Effective Date (as defined in Definitions par. "M" of the Stipulation), or as of October 15, 2016, whichever occurs sooner, all Released Claims of each and every member of the Class are and shall be deemed to be conclusively released as against Defendant. All persons and entities who are in the Class are hereby forever barred and enjoined from commencing, prosecuting or

continuing, either directly or indirectly, against Defendant, in this or any other jurisdiction or forum, any and all Released Claims (as defined in the Stipulation).

8. Without affecting the finality of this Final Judgment and Order of Dismissal with Prejudice in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorney fees and expenses in the Action; and (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation and the Settlement therein.

9. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

10. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendant, then this Final Judgment and Order of Dismissal with Prejudice shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

11. Pursuant to the terms of the Stipulation, entry of this Judgment shall become effective only *after* the Settlement has been fully funded (Stipulation of Settlement, at § III, par. F. 2. b.).

12. Therefore, the Clerk of the Court is expressly directed enter this Final Judgment and Order of Dismissal with Prejudice, on or after \_\_\_\_\_, 2016, unless otherwise ordered, so as to allow time for the Settlement to be effectuated prior to entry of the dismissal.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Vince Chhabria  
United States District Court Judge

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